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10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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13 In the Matter of the Accusation Against:

14 KELLY L. MACNEIL
13320 Olive Tree Lane
Poway, CA 92064

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16 Respiratory Care Practitioner
License No. 22486

17 Respondent.
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Case No. R-2054

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Stephanie Nunez (Complainant) is the Executive Officer of the
23 Respiratory Care Board of California. She brought this action solely in her official capacity and
24 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
25 California, by Samuel K. Hammond, Deputy Attorney General.

26 2. Respondent Kelly L. MacNeil (Respondent) is representing herself in this
27 proceeding and has chosen not to exercise her right to be represented by counsel.

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3. On or about August 2, 2002, the Respiratory Care Board of California issued Respiratory Care Practitioner License No. 22486 to Respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation No. R-2054 and will expire on November 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. R-2054 was filed before the Respiratory Care Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on February 2, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. R-2054 is attached hereto as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. R-2054. Respondent has also carefully read, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the complete truth and accuracy of each and every charge and allegation in Accusation No. R-2054.

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9. Respondent agrees that her Respiratory Care Practitioner License is subject to discipline and she agrees to be bound by the Respiratory Care Board's (Board) imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Respiratory Care Board. Respondent understands and agrees that counsel for Complainant and the staff of the Respiratory Care Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

DISCIPLINARY ORDER

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 22486 issued to Respondent KELLY L. MacNEIL is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

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1 1. COMPETENCY EXAMINATION Within 6 months of the effective date
2 of this decision, and/or as designated by the Board, Respondent shall be required to take and pass
3 a written competency examination as designated by the Board. This examination shall be taken
4 on a date specified by the Board and Respondent shall pay all examination fees (\$190).

5 Respondent's failure to appear for or pass any scheduled examination will be
6 noted as failure to pass or failure to successfully complete the examination. Respondent's failure
7 to successfully complete the examination after one scheduled examination shall constitute
8 incompetence and a violation of probation for the purposes of disciplinary proceedings, and shall
9 result in the filing of an accusation and/or a petition to revoke probation against Respondent's
10 respiratory care practitioner license.

11 Failure to pay costs for the examination will constitute a violation of probation.

12 2. EDUCATION/COURSE WORK Respondent shall be required to
13 successfully complete three semester (or its equivalent) units of education courses in California
14 at an institution approved by the Board in addition to the continuing education required for the
15 renewal of licensure. The course selection shall be submitted to and approved by the Board in
16 advance. The Board, at its discretion, may require the education to be in a specific area of study.
17 Successful completion is a grade of "C" or "70%" or better for any completed course.

18 Respondent shall be required to submit proof of successful completion in the form
19 of official transcripts no later than six (6) months prior to the date probation is scheduled to end.

20 Failure to timely and successfully complete approved courses at an approved
21 institution(s), or provide documentation thereof shall constitute a violation of probation.

22 Respondent is responsible for paying all costs associated with fulfilling this term
23 and condition of probation.

24 3. RESTRICTION OF PRACTICE Respondent may not be employed or
25 function as a member of a respiratory care management or supervisory staff during the entire
26 length of probation. This includes lead functions.

27 Respondent is prohibited from working in home care unless it is under direct
28 supervision and personal observation.

1 4. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
2 of Performance are due for each year of probation and the entire length of probation from each
3 employer, as follows:

4 For the period covering January 1st through March 31st, reports are to be
5 completed and submitted between April 1st and April 7th. For the period covering April 1st
6 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
7 the period covering July 1st through September 30th, reports are to be completed and submitted
8 between October 1st and October 7th. For the period covering October 1st through December 31st,
9 reports are to be completed and submitted between January 1st and January 7th.

10 Respondent is ultimately responsible for ensuring her employer(s) submits
11 complete and timely reports. Failure to ensure each employer submits complete and timely
12 reports shall constitute a violation of probation.

13 5. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
14 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
15 care in California.

16 Respondent shall notify the Board in writing within 14 days of any incident
17 resulting in her arrest, or charges filed against, or a citation issued against Respondent.

18 6. QUARTERLY REPORTS Respondent shall file quarterly reports of
19 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
20 by the Board. Omission or falsification in any manner of any information on these reports shall
21 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
22 to revoke probation against Respondent's respiratory care practitioner license.

23 Quarterly report forms will be provided by the Board. Respondent is responsible
24 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
25 year of probation and the entire length of probation as follows:

26 For the period covering January 1st through March 31st, reports are to be
27 completed and submitted between April 1st and April 7th. For the period covering April 1st
28 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For

the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

7. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

8. PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

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1 If Respondent is unable to submit costs for any month, she shall be required
2 instead to submit an explanation of why she is unable to submit the costs, and the date(s) she will
3 be able to submit the costs including payment amount(s). Supporting documentation and
4 evidence of why the Respondent is unable to make such payment(s) must accompany this
5 submission.

6 Respondent understands that failure to submit costs timely is a violation of
7 probation and submission of evidence demonstrating financial hardship does not preclude the
8 Board from pursuing further disciplinary action. However, Respondent understands providing
9 evidence and supporting documentation of financial hardship may delay further disciplinary
10 action.

11 In addition to any other disciplinary action taken by the Board, an unrestricted
12 license will not be issued at the end of the probationary period and the respiratory care
13 practitioner license will not be renewed, until such time all probation monitoring costs have been
14 paid.

15 The filing of bankruptcy by Respondent shall not relieve the Respondent of her
16 responsibility to reimburse the Board for costs incurred.

17 9. EMPLOYMENT REQUIREMENT Respondent shall be employed a
18 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of her
19 probation period.

20 Respondent may substitute successful completion of a minimum of thirty (30)
21 additional continuing education hours, beyond that which is required for license renewal, for
22 each 8 months of employment required. Respondent shall submit proof to the Board of
23 successful completion of all continuing education requirements. Respondent is responsible for
24 paying all costs associated with fulfilling this term and condition of probation.

25 10. NOTICE TO EMPLOYER Respondent shall be required to inform her
26 employer, and each subsequent employer during the probation period, of the discipline imposed
27 by this decision by providing her supervisor and director and all subsequent supervisors and
28 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in

1 this matter prior to the beginning of or returning to employment or within 14 days from each
2 change in a supervisor or director.

3 If Respondent is employed by or through a registry [and is not restricted from
4 working for a registry], Respondent shall make each hospital or establishment to which she is
5 sent aware of the discipline imposed by this decision by providing her direct supervisor and
6 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
7 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be
8 done each time there is a change in supervisors or administrators.

9 The employer will then inform the Board, in writing, that she is aware of the
10 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
11 the Board to obtain additional forms, if needed. All reports completed by the employer must be
12 submitted from the employer directly to the Board.

13 Respondent shall execute a release authorizing the Board or any of its
14 representatives to review and obtain copies of all employment records and discuss and inquire of
15 the probationary status with any of Respondent's supervisors or directors.

16 11. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
17 notify the Board, and appointed probation monitor, in writing, of any and all changes of
18 employment, location, and address within 14 days of such change. This includes, but is not
19 limited to, applying for employment, termination or resignation from employment, change in
20 employment status, change in supervisors, administrators or directors.

21 Respondent shall also notify her probation monitor AND the Board IN WRITING
22 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for
23 mailing purposes, however the Respondent must also provide her physical residence address as
24 well.

25 12. COST RECOVERY Respondent shall pay to the Board a sum not to
26 exceed the costs of the investigation and prosecution of this case. That sum shall be \$880.00 and
27 shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the
28 effective date of this decision. Cost recovery will not be tolled.

1 If Respondent is unable to submit costs timely, she shall be required instead to
2 submit an explanation of why she is unable to submit these costs in part or in entirety, and the
3 date(s) she will be able to submit the costs including payment amount(s). Supporting
4 documentation and evidence of why the Respondent is unable to make such payment(s) must
5 accompany this submission.

6 Respondent understands that failure to submit costs timely is a violation of
7 probation, and submission of evidence demonstrating financial hardship does not preclude the
8 Board from pursuing further disciplinary action. However, Respondent understands that
9 providing evidence and supporting documentation of financial hardship may delay further
10 disciplinary action.

11 Consideration to financial hardship will not be given should Respondent violate
12 this term and condition, unless an unexpected AND unavoidable hardship is established from the
13 date of this order to the date payment(s) is due.

14 The filing of bankruptcy by the Respondent shall not relieve the Respondent of
15 her responsibility to reimburse the Board for these costs.

16 13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods
17 of residency or practice outside California, whether the periods of residency or practice are
18 temporary or permanent, will toll the probation period, but will not toll the cost recovery
19 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
20 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
21 Board, in writing, within 14 days, upon her return to California and prior to the commencement
22 of any employment where representation as a respiratory care practitioner is/was provided.

23 14. VALID LICENSE STATUS Respondent shall maintain a current, active
24 and valid license for the length of the probation period. Failure to pay all fees and meet
25 Continuing Education requirements prior to her license expiration date shall constitute a
26 violation of probation.

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15. **VIOLATION OF PROBATION** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

16. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

ACCEPTANCE

I have carefully read this Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: April 6, 2007

Original signed by:
KELLY L. MACNEIL
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: April 17, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

Original signed by:
SAMUEL K. HAMMOND
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2054

KELLY L. MACNEIL
13320 Olive Tree Lane
Poway, CA 92064

Respiratory Care
Practitioner License No. 22486

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 31, 2007.

It is so ORDERED May 21, 2007.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA